

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

NICHOLAS ELY,

Petitioner,

vs.

SCOTT R. FRAKES, Director of the
Nebraska Department of Correctional
Services; TODD WASMER, Warden
Tecumseh Correctional Institution; DIANE
SABATKA-RINE, Interim Director of the
Nebraska Department of Correctional
Services; and ROB JEFFREYS, the Director
of the Nebraska Department of Correctional
Services,

Respondents.

8:21CV95

ORDER

This matter comes before the Court on Petitioner's Motion for Continuance for Filing Petition for Rehearing and Brief. [Filing No. 40](#). Ely's counsel states he seeks a 30-day extension for the time in which to file for rehearing. [Filing No. 40 at 1](#).

The Court entered its memorandum and order and judgment dismissing this habeas-corpus petition on April 22, 2024. [Filing No. 32](#); [Filing No. 33](#). Thereafter, Ely filed an appeal to the Eighth Circuit Court of Appeals, [Filing No. 34](#). The Eighth Circuit denied Ely's request for a certificate of appealability by order dated June 14, 2024. [Filing No. 39](#). Thus, it appears Ely is seeking an extension of the time within which to move for rehearing regarding his dismissed appeal. A petition for panel rehearing or for rehearing en banc must be filed within 14 days after the entry of the appellate court's judgment. [Fed. R. App. P. 40\(a\)\(1\)](#) (panel rehearing); [Fed. R. App. P. 35\(c\)](#) (rehearing en banc).

Such a motion is not properly before this Court and should be directed to the Eighth Circuit Court of Appeals instead. Accordingly,

IT IS ORDERED:

- 1) Petitioner's Motion for Continuance for Filing Petition for Rehearing and Brief, [Filing No. 40](#), is denied as it is not properly before the Court. Petitioner is instructed to file his motion with the Eighth Circuit Court of Appeals.

Dated this 1st day of July, 2024.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge